IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01/10/2004

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

Writ Petition No.1490 of 1997

The Chairman
Karur Vysya Bank Limited
Karur-639 002. ... Petitioner

-Vs-

1.The Presiding Officer
Industrial Tribunal, Madras.

2.The Workman rep.by the President
Tamil Nadu Bank Deposit
Collectors Union,
55 Armenian Street, Madras-600 001. ... Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling
records of the first respondent in I.D.No.27 of 1985 and quash its award dated 2.8.1996.

For Petitioner :: Mr.Ravindran
For Respondents:: Ms.Anna Mathew

:O R D E R

Aggrieved by the award passed by the Labour Court in I.D.No.27 of 19
85, directing the petitioner/Management to reinstate one Thiru. Vaidyanathan with continuity of service and backwages at Rs.750/- per month from the date of dismissal till the said Vaidyanathan assumes duty, on whose behalf the second respondent/Union raised the said I.D., the petitioner/Management has preferred the above writ petition.

2. In brief, the second respondent Union, on behalf of one Thiru. Vaidyanathan, who was working as Honey Bee Deposit Organiser in the Alandur Branch of the petitioner bank, raised an industrial dispute in I.D.No.27 of 1985 under Section 10(1)(d) of the Industrial Disputes Act, questioning the termination of service of the said Thiru. Vaidyanathan. The industrial dispute was resisted by the Management on the ground that,

(a)the Honey Bee Deposit Organisers, even though construed as a workman within

the meaning of Section 2(6) of the Industrial Disputes Act, they are not regular employees and that the bank has no control over them; and (b)since they are only employed as Commission Agents, the question of their non-employment does not arise in a strict sense, particularly when Thiru.Vaidyanathan has abandoned the service for a period of 10 months from September 1981 to July 1982, and therefore, the question of wage, much less back wages does not arise .

3.1. The labour Court, in its award dated 2.8.1996, refused to accept the contentions of the Petitioner/Management and held that even though Thiru.Vaidyanathan failed to act as Honey Bee Deposit Organiser from the period September 1981 to July 1982, since he had explained in his letter dated 27.7.1982 that he was ill during that period, the petitioner/Management ought to have held an enquiry and passed an order before holding that he had abandoned the service and therefore, directed the petitioner/Management to reinstate Thiru.Vaidyanathan with continuity of service and backwages.

3.2. That apart, the labour Court, based on the award of the Industrial Tribunal, Hyderabad in I.D.No.14/80 dated 22.12.1988 between the "WORKMEN OF SYNDICATE BANK & 47 OTHER BANKS AND THE MANAGEMENT OF SYNDICATE
BANK & 47 OTHER BANKS" in the case of Honey Bee Deposit Organisers, wherein a minimum of Rs.750/- per month was fixed as wage to the Honey Bee Deposit Organisers, if they are able to raise a minimum deposit of Rs.7,500/-, also awarded a sum of Rs.750/- per month as wage.

4.1. Mr.Ravindran, learned counsel for the petitioner/Management, reiterating the submissions made before the Labour Court, submits that even though the Honey Bee Deposit Organisers are ought to be construed as workmen within the meaning of Section 2(6) of the Industrial Disputes Act, they are not regular employees and when they abstain from duty or abandon the service, the question of non-employment does not arise and hence the finding of the labour Court that Thiru. Vaidyanathan suffered a non-employment in the hands of the petitioner/ Management, is unsustainable in law and consequently the awarding of reinstatement and backwages to the said Thiru.Vaidyanathan, when the question of non-employment itself does not arise, is perverse.

4.2. Placing reliance on the decision reported in "HINDUSTAN MOTORS LTD., V. TAPAN KUMAR BHATTACHARYA AND ANOTHER (2002 (3) L.L.N.767" it is contended that the impugned award suffers from non application of mind while awarding the backwages, as it is a settled law that awarding of back wages is not a matter of course, as the labour Court is duty bound to consider whether in the circumstances of the case on hand, the workman is entitled to backwages or otherwise.

5. Per contra, Ms.Anna Mathew, learned counsel appearing for the second respondent contends that since the award has been passed purely finding that it is unreasonable to refuse employment to Thiru. Vaidyanathan, even without offering a reasonable opportunity to present his case, no interference is called for in the impugned award. It is further argued that it is a settled proposition that the Honey Bee Deposit Organisers are construed as

workmen within the meaning of Section 2 (6) of the Industrial Disputes Act even though they are working as Commission Agents and their wage could be determined, as held by the Apex Court in 'INDIAN BANKS ASSOCIATION V. WORKMEN OF SYNDICATE BANK AND OTHERS; (2001) 3 S.C.C.36".

6. I have given careful consideration to the submissions of both sides. Upon the above rival contentions, the following two vital issues raise for consideration.

Whether the non-employment of Thiru.Vaidyanathan is sustainable in law and to what relief he is entitled to?

The Apex Court in 'INDIAN BANKS ASSOCIATION V. WORKMEN OF SYNDICATE BANK AND OTHERS; (2001) 3 S.C.C.36", has now declared that Honey Bee Deposit Organisers/Collectors of the banks, although were not regular employees, are workmen within the meaning of Section 2(6) of the Industrial Disputes Act and there exists a master and servant relationship between the bank the deposit collectors/organisers and the banks have control over them and the deposit collectors/organisers are accountable to the bank. The Indian Bank Association's case is a case which arose from the award passed by the Industrial Tribunal, Hyderabad, which has been followed by the labour Court in arriving at the back wages. In the instant case, the amount awarded is based on the following admitted facts.

i.Thiru.Vaidyanathan (the workman) was serving the petitioner bank as Honey Bee Deposit Organiser;
ii.He was absent from duty from September, 1981 to July, 1982;
iii.He was not collecting any deposits during the period from September 1981 to July 1982 and therefore, he suffered a non-employment in the hands of the petitioner bank; and
iv.By his letter dated 27.7.1982, he submitted his explanation that he was not well during the said period of absence.

v.The workman was not given a reasonable opportunity to present his case.
6.2. The Apex Court, in "D.K.Yadav -vs- J.M.A.Industries Ltd., 1999 (3) SCC 259" has held as follows:-

" 8. The cardinal point that has to be borne in mind, in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the concerned person.

9. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case. An order involving civil consequences must be made consistently with the rules of

natural justice. In Mohinder Singh Gill v. Chief Election Commissioner, the Constitution Bench held that 'civil consequences' covers infraction of not merely property or personal right but of civil comprehensive connotation every thing that affects a citizen in his civil liberties, material deprivations and nonpecuniary damages. In its comprehensive connotation every thing that affects a citizen in his civil life inflicts a civil consequence. Black's Law Dictionary, 4th edn., page 1487 defined civil rights such as belong to every citizen of the state or country .... they include .... rights capable of being enforced or redressed in that even an administrative order which involves civil consequences must be made consistently with the rules of natural justice. The person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity was given it was held that superannuation was in violation of principles of natural justice."
(emphasis supplied)
6.3. In the instant case, the labour Court came to the conclusion that the non-employment is illegal purely on the ground that inspite of the letter furnished by the workman, the Management failed to consider the same. Therefore, once the Honey Bee Deposit Organisers come within the meaning of workmen under Section 2(6) of the Industrial Disputes Act, Thiru.Vaidyanathan should not be made to suffer nonemployment, without giving an opportunity to explain his case, which would otherwise be a violation of the principles of natural justice, even assuming that he had abandoned the service, as contended by the Management. Hence, the non employment of Thiru.Vaidyanathan on the ground that he has abandoned the service is held to be illegal and unjustified.
7.1. This leads for the supplementary issue as to what relief the workman is entitled to ?

7.2. The tribunal relied on the decision reported in (2001) 3 S.C.C.36 (INDIAN BANKS ASSOCIATION V. WORKMEN OF SYNDICATE BANK AND OTHERS), for fixing backwages at Rs.750/- per month for the Honey Bee Deposit Organisers who raise a minimum deposit of Rs.7500/- per month, even though they are not regular employees. But in the instant case, the workman suffered non-employment in violation of principles of natural justice. However, the fact remains that he had not raised any deposits during the period of his non-employment.

8. In that view of the matter, I am of the opinion that a rate of Rs.350/- per month instead of Rs.750/- per month during the period of non-employment is fair and reasonable. Accordingly, the impugned award stands modified to the effect that the workman Vaidyanathan shall be reinstated with backwages at the rate of Rs.350/- per month from the date of his non-employment till he is reinstated in service by the petitioner/Management and he shall be entitled to withdraw the sum of Rs.50,000/- already deposited to the credit of the I.D.No.27 of 1985 pursuant to the interim orders dated 4.2.1997 in W.M.P.No.2493 of 19 97.

9. The writ petition is allowed in part as stated above.

01.10.2004
Index : Yes
Internet: Yes
KST.

To

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